

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AVISTUS FOBATE,

Plaintiff

Case No. 2:22-cv-01948-ART-VCF

ORDER

v.

R J SMITH, et al.,

Defendants

I. DISCUSSION

Plaintiff has applied to proceed *in forma pauperis* (“IFP”) in this action. (ECF No. 1). The Court previously deferred a ruling on the IFP. (ECF No. 10 at 8). On May 12, 2023, the screening order permitted the Eighth Amendment failure to protect claim (claim 2) to proceed against Defendants Doe 1 and Doe 2 when Plaintiff learned their identities and filed a motion to substitute their names in the first amended complaint (“FAC”). (*Id.*)

The Court now grants Plaintiff’s motion to substitute the true names of the doe defendants. (ECF No. 19). Per the motion, Doe 1 will be substituted as Control Bubble Officer Christian Guardarrama and Doe 2 will be substituted as Floor Officer Thomas Rosas. The Eighth Amendment failure to protect claim (claim 2) will now proceed against Defendants Guardarrama and Rosas.

II. CONCLUSION

For the foregoing reasons, it is ordered that the motion to substitute (ECF No. 19) is granted.

The Clerk of the Court is directed to add Christian Guardarrama and Thomas Rosas to the docket sheet as defendants in this case.

It is further ordered that claim 2, alleging Eighth Amendment failure to protect, will proceed against Defendants Guardarrama and Rosas.

It is further ordered that given the nature of the claim(s) that the Court has permitted to proceed, this action is stayed for 90 days to allow Plaintiff and Defendant(s)

1 an opportunity to settle their dispute before the Court will determine whether to grant
2 Plaintiff's IFP application, the \$350 filing fee is paid, an answer is filed, or the discovery
3 process begins. During this 90-day stay period and until the Court lifts the stay, no other
4 pleadings or papers may be filed in this case, and the parties will not engage in any
5 discovery, nor are the parties required to respond to any paper filed in violation of the stay
6 unless specifically ordered by the Court to do so. The Court will refer this case to the
7 Court's Inmate Early Mediation Program, and the Court will enter a subsequent order.
8 Regardless, on or before 90 days from the date this order is entered, the Office of the
9 Attorney General will file the report form attached to this order regarding the results of the
10 90-day stay, even if a stipulation for dismissal is entered prior to the end of the 90-day
11 stay. If the parties proceed with this action, the Court will then issue an order setting a
12 date for Defendants to file an answer or other response. Following the filing of an answer,
13 the Court will issue a scheduling order setting discovery and dispositive motion deadlines.

14 It is further ordered that "settlement" may or may not include payment of money
15 damages. It also may or may not include an agreement to resolve Plaintiff's issues
16 differently. A compromise agreement is one in which neither party is completely satisfied
17 with the result, but both have given something up and both have obtained something in
18 return.

19 It is further ordered that if the case does not settle, then the Court will determine
20 whether to grant Plaintiff's IFP application. Plaintiff will be required to pay the full \$350.00
21 statutory filing fee for a civil action regardless of whether the Court grants his IFP
22 application. This fee cannot be waived, and the fee cannot be refunded once the Court
23 enters an order granting Plaintiff's IFP application. If Plaintiff is allowed to proceed IFP,
24 the fee will be paid in installments from his prison trust account. See 28 U.S.C. § 1915(b).
25 If Plaintiff is not allowed to proceed IFP, the full \$350 statutory filing fee for a civil action
26 plus the \$52 administrative filing fee, for a total of \$402, will be due immediately.

27 It is further ordered that if any party seeks to have this case excluded from the
28 inmate mediation program, that party will file a "motion to exclude case from mediation"

1 no later than 21 days prior to the date set for mediation. The responding party will have
2 7 days to file a response. No reply will be filed. Thereafter, the Court will issue an order,
3 set the matter for hearing, or both.

4 It is further ordered that if Plaintiff needs an interpreter to participate in the
5 mediation program, Plaintiff will file a notice identifying the interpretation language and
6 the need for the interpreter within 30 days from the date of this order.

7 It is further ordered that the Clerk of Court is further directed to add the Nevada
8 Department of Corrections to the docket as an Interested Party and electronically serve
9 a copy of this order, the screening order (ECF No. 10), and a copy of Plaintiff's FAC (ECF
10 No. 11) on the Office of the Attorney General of the State of Nevada by adding the
11 Attorney General of the State of Nevada to the interested party on the docket. This does
12 not indicate acceptance of service.

13 It is further ordered that the Attorney General's Office will advise the Court within
14 21 days of the date of the entry of this order whether it will enter a limited notice of
15 appearance on behalf of Defendants for the purpose of settlement. No defenses or
16 objections, including lack of service, will be waived as a result of the filing of the limited
17 notice of appearance.

18 DATED THIS 17th
19 day of October 2023.



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21 United States Magistrate Judge
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AVISTUS FOBATE,

Plaintiff

v.

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Case No. 2:22-cv-01948-ART-VCF

REPORT OF ATTORNEY GENERAL
 RE: RESULTS OF 90-DAY STAY

**NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL SHALL FILE THIS FORM.
 THE INMATE PLAINTIFF SHALL NOT FILE THIS FORM.**

On _____ [*the date of the issuance of the screening order*], the Court issued its screening order stating that it had conducted its screening pursuant to 28 U.S.C. § 1915A, and that certain specified claims in this case would proceed. The Court ordered the Office of the Attorney General of the State of Nevada to file a report ninety (90) days after the date of the entry of the Court's screening order to indicate the status of the case at the end of the 90-day stay. By filing this form, the Office of the Attorney General hereby complies.

REPORT FORM

[Identify which of the following two situations (identified in bold type) describes the case, and follow the instructions corresponding to the proper statement.]

Situation One: Mediated Case: The case was assigned to mediation by a court-appointed mediator during the 90-day stay. [If this statement is accurate, check **ONE** of the six statements below and fill in any additional information as required, then proceed to the signature block.]

_____ A mediation session with a court-appointed mediator was held on _____ [*enter date*], and as of this date, the parties have reached a settlement (*even if paperwork to memorialize the settlement remains to be completed*). (*If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in the case until a specified date upon which they will file a stipulation of dismissal.*)

_____ A mediation session with a court-appointed mediator was held on _____ [*enter date*], and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

1 _____ No mediation session with a court-appointed mediator was held during the
2 90-day stay, but the parties have nevertheless settled the case. *(If this box*
3 *is checked, the parties are on notice that they must SEPARATELY file a*
4 *contemporaneous stipulation of dismissal or a motion requesting that the*
Court continue the stay in this case until a specified date upon which they
will file a stipulation of dismissal.)

5 _____ No mediation session with a court-appointed mediator was held during the
6 90-day stay, but one is currently scheduled for _____ [enter
date].

7 _____ No mediation session with a court-appointed mediator was held during the
8 90-day stay, and as of this date, no date certain has been scheduled for
such a session.

9 _____ None of the above five statements describes the status of this case.
10 Contemporaneously with the filing of this report, the Office of the Attorney
General of the State of Nevada is filing a separate document detailing the
status of this case.

11 * * * * *

12 **Situation Two: Informal Settlement Discussions Case:** The case was NOT assigned
13 to mediation with a court-appointed mediator during the 90-day stay; rather, the
14 parties were encouraged to engage in informal settlement negotiations. [If this
statement is accurate, check **ONE** of the four statements below and fill in any additional
information as required, then proceed to the signature block.]

15 _____ The parties engaged in settlement discussions and as of this date, the
16 parties have reached a settlement *(even if the paperwork to memorialize*
17 *the settlement remains to be completed)*. *(If this box is checked, the parties*
18 *are on notice that they must SEPARATELY file either a contemporaneous*
stipulation of dismissal or a motion requesting that the Court continue the
stay in this case until a specified date upon which they will file a stipulation
of dismissal.)

19 _____ The parties engaged in settlement discussions and as of this date, the
20 parties have not reached a settlement. The Office of the Attorney General
therefore informs the Court of its intent to proceed with this action.

21 _____ The parties have not engaged in settlement discussions and as of this date,
22 the parties have not reached a settlement. The Office of the Attorney
General therefore informs the Court of its intent to proceed with this action.

23 _____ None of the above three statements fully describes the status of this case.
24 Contemporaneously with the filing of this report, the Office of the Attorney
25 General of the State of Nevada is filing a separate document detailing the
status of this case.

26 Submitted this _____ day of _____, _____ by:

27 Attorney Name: _____

Print

Signature

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